



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R09-OAR-2015-0846, FRL-9950-41-Region 9]

Partial Stay; Arizona; Regional Haze Federal Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Partial stay.

SUMMARY: The Environmental Protection Agency (EPA) is granting an administrative stay of specific provisions of the Arizona Regional Haze Federal Implementation Plan (FIP) applicable to the Phoenix Cement Company (PCC) Clarkdale Plant and the CalPortland Company (CPC) Rillito Plant under the Clean Air Act (CAA). In response to requests from PCC and CPC, we are staying the effectiveness of control technology optimization requirements for nitrogen oxides (NO_x) applicable to Kiln 4 at the Clarkdale Plant and Kiln 4 at the Rillito Plant during the EPA's reconsideration of these requirements under CAA section 307(d)(7)(B) for a period of 90 days. Today's action reflects this stay in the Code of Federal Regulations.

DATES: Effective [Insert date of publication in the Federal Register], 40 CFR 52.145(k)(6) and Appendix A to 40 CFR 52.145 are stayed until [Insert date 90 days after the date of publication in the Federal Register]. The addition of 40 CFR 52.145(n) in this rule is also effective from [Insert date of publication in the Federal Register] until [Insert date 90 days after the date of publication in the Federal Register].

ADDRESSES: The EPA has established a docket for this action under Docket ID No.

EPA-R09-OAR-2015-0846. All documents in the docket are listed on the

<http://www.regulations.gov> web site. Although listed in the index, some information is not publicly available, e.g., confidential business information (CBI) or other information whose

disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available electronically through <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Colleen McKaughan, U.S. EPA, Region 9, Air Division, Air-1, 75 Hawthorne Street, San Francisco, CA 94105. Colleen McKaughan can be reached at telephone number (520) 498-0118 and via electronic mail at mckaughan.colleen@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document, “we,” “us,” and “our” refer to the EPA.

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I. Background

This section provides a brief overview of the background for today’s action. Please refer to our proposed action on reconsideration for additional background.¹ On September 3, 2014, the EPA promulgated a FIP addressing certain requirements of the CAA and the EPA’s Regional Haze Rule for sources in Arizona.² Among other things, the Arizona Regional Haze FIP includes NO_x emission limits achievable with selective non-catalytic reduction (SNCR) applicable to Clarkdale Kiln 4 and Rillito Kiln 4. In particular, the EPA established two alternative emission limits for NO_x on Clarkdale Kiln 4: a 2.12 lb/ton limit or an 810 tons/year limit. The lb/ton limit equates to

¹ 81 FR 42600 (June 30, 2016).

² 79 FR 52420 (September 3, 2014)(Arizona Regional Haze “Phase 3” Rule).

the installation of a SNCR system, based on a 50 percent control efficiency, while the ton/year limit could be met either by installing SNCR or by maintaining recent production levels. We set an emission limit for NO_x at Rillito Kiln 4 of 3.46 lb/ton, based on a 35 percent control efficiency. The FIP also includes monitoring, recordkeeping, and reporting requirements and a compliance deadline for the final NO_x emission limits of December 31, 2018. Finally, in response to comments alleging that SNCR control efficiencies of 50 percent for Clarkdale Kiln 4 and 35 percent for Rillito Kiln 4 were unsupported and that SNCR was capable of achieving higher control efficiencies, we established requirements for control technology demonstrations (“optimization requirements”) for the SNCR systems at both kilns, which would entail the collection of data that then could be used to determine if a higher control efficiency was achievable.

PCC and CPC each submitted a petition to the EPA on November 3, 2014, seeking administrative reconsideration and a partial stay of the final FIP under CAA section 307(d)(7)(B) and the Administrative Procedure Act (APA).³ In their petitions, both companies raised multiple objections to the optimization requirements in the FIP. CPC asserted that the requirements were burdensome, expensive, and unnecessary, given that CPC had already “evaluated fuels, fuel fineness, and the other characteristics listed in the Optimization Protocol” as part of its effort to reduce energy usage.⁴ PCC stated that the requirements “would be burdensome to implement” and

³ Letter from Verle C. Martz, PCC, to Regina McCarthy, EPA (November 3, 2014); Letter from Jay Grady, CPC, to Regina McCarthy, EPA (November 3, 2014).

⁴ Letter from Jay Grady, CPC, to Regina McCarthy, EPA (November 3, 2014), attachment entitled “Petition of CalPortland Company for Partial Reconsideration and Request for Administrative Stay of EPA Final Rule, Promulgation of Air Quality Implementation Plans; Arizona; Regional Haze and Interstate Visibility Transport Federal Implementation Plan Published at 79 FR 52420” at 4.

“would substantially interfere with the cement manufacturing operations” at the Clarkdale Plant.⁵ PCC further asserted that requirements would harm the Salt River Pima-Maricopa Indian Community (SRPMIC), which relies on revenue from the Clarkdale Plant.⁶

The EPA sent letters to PCC and CPC on January 16, 2015 and January 27, 2015, respectively, granting reconsideration of the optimization requirements pursuant to CAA section 307(d)(7)(B).⁷ However, the EPA did not act on the companies’ request for a stay of those requirements. On June 30, 2016, the EPA issued its proposed action on reconsideration, proposing to replace the optimization requirements for both kilns with a series of revised recordkeeping and reporting requirements.⁸

II. Administrative Stay

In light of the EPA’s proposed rule to replace the optimization requirements applicable to Clarkdale Kiln 4 and Rillito Kiln 4 and the fact that these provisions require implementation of various operational adjustments and submittal of protocols and reports in advance of the December 31, 2018 compliance deadline for the NO_x emission limits, the EPA is now granting PCC’s and CPC’s petitions for a stay of the effectiveness of those requirements under CAA section 307(d)(7)(B). In particular, we are staying the effectiveness of 40 CFR 52.145(k)(6) and Appendix A to 40 CFR 52.145 for a period of 90 days, which is the maximum length of a stay authorized under CAA section 307(d)(7)(B). The EPA anticipates that we will complete final action on reconsideration prior to the conclusion of this stay, but if we are unable to do so, we will consider

⁵ Letter from Verle C. Martz, PCC, to Regina McCarthy, EPA (November 3, 2014) at 2.

⁶ We note that while the Clarkdale Plant is tribally owned, it is not located on tribal land. It is subject to State jurisdiction and is regulated by ADEQ.

⁷ Letter from Jared Blumenfeld, EPA, to Verle C. Martz, PCC (January 16, 2015); Letter from Jared Blumenfeld, EPA, to Jay Grady, CPC (January 27, 2015).

⁸ 81 FR 42600.

granting a further stay of the optimization requirements under section 705 of the APA.

III. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at <http://www2.epa.gov/laws-regulations/laws-and-executive-orders>.

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is exempt from review by the Office of Management and Budget (OMB) because it applies to only two facilities and is therefore not a rule of general applicability.

B. Paperwork Reduction Act (PRA)

This action does not impose an information collection burden under the provisions of the PRA, 44 U.S.C. 3501 et seq. Burden is defined at 5 CFR 1320.3(b).

C. Regulatory Flexibility Act (RFA)

This action is not subject to the RFA. The RFA applies only to rules subject to notice and comment rulemaking requirements under the APA, 5 U.S.C. 553, or any other statute. This rule is not subject to the APA but is subject to the CAA, which does not require notice and comment rulemaking to take this action.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. The action imposes no enforceable duty on any state, local, or tribal governments or the private sector.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or in the

distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132.

F. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments

This action has tribal implications. However, it will neither impose substantial direct compliance costs on federally recognized tribal governments, nor preempt tribal law. This action stays the effectiveness of optimization requirements that currently apply to the PCC Clarkdale Plant. The profits from the Clarkdale Plant are used to provide government services to SRPMIC's members.

The EPA consulted with tribal officials under the EPA Policy on Consultation and Coordination with Indian Tribes early in the process of developing our proposed action on reconsideration of the optimization requirements to permit them to have meaningful and timely input into its development.⁹

G. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of “covered regulatory action” in section 2-202 of the Executive Order. This action is not subject to Executive Order 13045 because it does not concern an environmental health risk or safety risk.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

⁹ See Summary of Consultation with SRPMIC Regarding Regional Haze FIP Reconsideration (Docket ID No. EPA-R09-OAR-2015-0846-0026).

This action is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act (NTTAA)

This rulemaking does not involve technical standards.

J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations

The EPA has determined that this proposed rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not change the level of environmental protection for any affected populations.

K. Congressional Review Act

This rule is exempt from the CRA because it is a rule of particular applicability.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen oxides, Reporting and recordkeeping requirements, Visibility.

AUTHORITY: 42 U.S.C. 7401 et seq.

Dated: August 1, 2016.

Gina McCarthy,
Administrator.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 et seq.

Subpart D--Arizona

2. Amend § 52.145 by adding paragraph (n) to read as follows:

§ 52.145 Visibility protection.

* * * * *

(n) The effectiveness of paragraph (k)(6) of this section and Appendix A to this section is stayed from **[Insert date of publication in the Federal Register]** until **[Insert date 90 days after the date of publication in the Federal Register]**.

[FR Doc. 2016-19113 Filed: 8/12/2016 8:45 am; Publication Date: 8/15/2016]